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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,291	09/26/2001	Timothy R. Martin	KCC-15,832	1633
35844	7590	11/20/2003	EXAMINER	
PAULEY PETERSEN KINNE & ERICKSON 2800 WEST HIGGINS ROAD SUITE 365 HOFFMAN ESTATES, IL 60195			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 11/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/964,291	Applicant(s) MARTIN, TIMOTHY R.	
	Examiner Cheryl Juska	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>06/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed August 15, 2003, has been entered. Claims 1, 16, 21, and 24 have been amended as requested. The pending claims are 1-39.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-6, 10-15, 24, 25, and 36-39 stand rejected under 35 USC 102(b) as being anticipated by JP 11-061624 issued to Makihara, as set forth in section 2 of the last Office Action.

Applicant has amended independent claims 1 and 24 to limit the fibrous retractable web to being a single layer web. However, this amendment is insufficient to overcome said prior art rejection. Specifically, claim 1 reads "the loop component including a single layer of a thermally retracted material." First, it is noted that the claim contains open language (i.e., loop material "including"). Thus, the claim language does not necessarily exclude other materials or layers. Secondly, it is noted that Makihara teaches two fiber layers which are *integrated* into a *unitary* layer by hydroentanglement. Note Makihara translation, abstract and sections [0005], [0009], [0014], [0015], [0034], and [0038]. Thus, the starting material of Makihara's retractable material comprises two fiber layers, but the final product is a single, unitary layer. Therefore, the above rejection is maintained.

Claim Rejections - 35 USC § 102/103

4. Claims 9 and 35 stand rejected under 35 USC 102(b) as being anticipated by, or in the alternative, under 35 USC 103(a) as being obvious over the cited Makihara reference, as set forth in section 4 of the last Office Action.

Claim Rejections - 35 USC § 103

5. Claims 7 and 8 stand rejected under 35 USC 103(a) as being unpatentable over the cited Makihara reference in view of US 5,997,981 issued to McCormack et al., as set forth in section 5 of the last Office Action.

6. Claims 26-32 stand rejected under 35 USC 103(a) as being unpatentable over the cited Makihara reference in view of US 6,066,221 issued to Marmon et al., as set forth in section 6 of the last Office Action.

7. Claims 33 and 34 stand rejected under 35 USC 103(a) as being unpatentable over the cited Makihara and Marmon references in further view of US 5,707,468 issued to Arnold et al., as set forth in section 7 of the last Office Action.

Allowable Subject Matter

8. Claims 16-23 are allowed.

9. Independent claim 16 has been amended to limit the loop component to include two layers of thermally retractable materials that are thermally bonded to one another. As noted above, Makihara starts with two layers and hydroentangles them into a unitary web. It might have been obvious to one skilled in the art bond the two Makihara layers thermally instead of by

hydroentanglement, but Makihara lacks a teaching or suggestion that both of the layers are thermally retractable fibers. Specifically, only one layer of Makihara is thermally shrinkable, while the other layer is not. Thus, the prior art does not teach or fairly suggest the subject matter of claims 16-23.

Response to Arguments

10. Applicant's arguments filed with the amendment have been fully considered but they are not persuasive.

11. Applicant argues that the present claim limitation of a "single layer of thermally retractable material" distinguishes the present invention from the Makihara reference. However, as noted above, Makihara's starting material is two layers, but the final product is a single integrated layer of thermally retractable material. As such, applicant's arguments are found unpersuasive.

12. With respect to the rejections of claims 9 and 35, applicant argues that Makihara teaches away from the claimed shrinkage in the cross direction. However, it is argued that less than preferred embodiments of the prior art are still valid teachings. Note *In re Boe*, 148 USPQ 507 and *In re Gurley*, 31 USPQ2d 1130. Additionally, it is reiterated that the claims do not limit the amount of shrinkage in the cross direction. Hence, Makihara's teaching that minimizing shrinkage in said direction implies that at least some shrinkage does occur. Therefore, said rejection is maintained.

13. With respect to the rejection of claims 7 and 8, applicant argues that the cited prior art would not provide proper motivation to modify Makihara, since the secondary reference of

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McCormack teaches a film layer bonded to a nonwoven layer. In response, it appears applicant has misunderstood the rejection at hand. Specifically, it is asserted that it would have been obvious to bond the two layers of Makiyara by point bonding said two layers together in an S-weave bond pattern, rather than by hydroentanglement. The rejection does not assert that it would be obvious to hydroentangle two pre-bonded S-weave spunbond fabrics, as applicant seems to imply. Thus, said argument is found unpersuasive.

14. With respect to claims 26-32, applicant traverses the rejection by arguing Marmon's failure to teach the use of hot air knives on thermally retractable materials. In response, it is first argued that Marmon need not contain such a teaching. Marmon is relied upon solely to evidence hot air knives and the process parameters thereof. Secondly, as noted in the last Office Action, it is presumed that Makiyara's teaching of a "hot blast penetration type dryer" is equivalent to a hot air knife. It is also noted that, for clarification on this issue, an official translation of the Makiyara reference has been ordered, but not yet obtained.

15. Applicant similarly traverses the rejections of claims 33 and 34, by reiterating the arguments against Marmon and by asserting that Arnold does not teach hot air knives for thermal retraction. In response, it is reiterated that Arnold is merely relies upon to teach the use of a vacuum with a hot air knife. Thus, applicant's argument is found unpersuasive and the rejection is maintained.

Conclusion

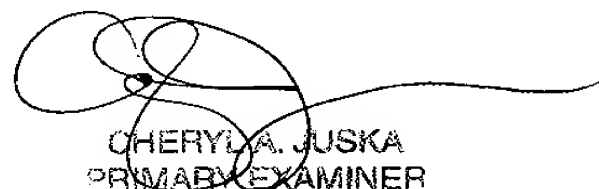
16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

17. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYLA. JUSKA
PRIMARY EXAMINER